IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1755 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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JOHARHUSSAIN @ JORAVAR ISMAILBHAI SANDHI - Applicant(s)

Versus

THE DEPUTY COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Applicant(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
UNSERVED-REFUSED (R) for Respondent(s) : 2,
PUBLIC PROSECUTOR for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 29/12/2005

ORAL JUDGMENT

1.Joharhussain @ Joravar Ismailbhai Sandhi, petitioner has filed this petition under Article 226 and 227 of

the Constitution of India challenging the impugned order dated 25/7/2005 passed by the Deputy Commissioner of Police, Ahmedabad, respondent no.1 under Section 56(b) of the Bombay Police Act, 1951, externing the petitioner and also order of the Deputy Secretary, Home Department, New Sachivalaya, Gandhinagar. Petition was filed on 13/12/2005.

2. This Court has issued Rule on 16/12/2005 which was returnable. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. With consent of parties, matter has been taken up for final hearing to this Court today.

3. Ms.Banna Dutta, learned advocate for the petitioner has stated that show cause notice of externment has been issued on 16/7/2004 to the petitioner. Thereafter, the petitioner has filed reply immediately. However, the Deputy Police Commissioner, Ahmedabad has passed an order of externment on 25/7/2005, externing the petitioner for two years. Though the order of externment has been passed after unreasonable delay, the authority has not given any reason as to why there is a delay in passing the order. The learned advocate

has stated that thereafter, the petitioner has filed appeal. The appellate authority has rejected the appeal only on the ground of delay.

4.There are several grounds in this behalf but the learned advocate confined to only one ground i.e. ground of delay. For the same, the learned advocate for the petitioner has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another in Special Criminal Application No.1451 of 2005 decided on 1/12/2005. The learned advocate has also relied upon another judgment of this Court (Coram:K.M.Mehta, J.) in Special Criminal Application No.1547 of 2005 decided on 29/12/2005.

5.I have considered the provisions of Section 56 and 59 of the Bombay Police Act. I have also considered judgment cited by the petitioner. In my view, the externing authority has passed an order after great delay therefore, the order of externment is required to be quashed and set aside.

6.In the result, petition is allowed. Order of

externment dated 25/7/2005 is quashed and set aside and order of appellate authority, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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